

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.309/2003

Reserved on.20.6.2007

Decided on.23.7.2007

Union of Inida

...Petitioner.

Versus

M/s Best Coal Co.

...Respondent

Coram

The Hon'ble Mr. Rajiv Sharma, J.

Whether approved for reporting ?¹.No.

For the petitioner : Mr. J.L. Kashyap, Advocate.

For the respondent Mr. K.D. Sood, Advocate.

Rajiv Sharma, J.

A challenge has been made by the petitioner to the judgment dated 6.9.2002 passed by Additional district Judge, Shimla in CMA No. 21-S/14/1995.

The brief facts necessary for the adjudication of this petition are that the respondent-company was issued a licence for the purpose of stacking coal etc. which was carried from Kalka to Shimla by rail. The licence issued in favour of the respondent was revoked vide letter No.1146-C4/CP/SML/230/Pt-III dated February, 1986. The petitioner had filed an application before the Estate Officer, Northern Railway, Ambala Cantonment seeking eviction of the respondent as well as for the payment of damages. The Estate Officer vide order dated 17th March, 1992 had closed the proceedings under section 4 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (hereinafter referred to as the Act for

¹ *Whether the reporters of Local Papers may be allowed to see the judgment?* No.

brevity sake) on the basis of the statement of Sh. Pramod Sood. The Estate Officer had further directed the respondent to pay a sum of Rs. 32432.27 paisa to the petitioner towards damages. The petitioner was directed by the Estate Officer to execute a fresh agreement which was to be renewed after every three years.

Feeling aggrieved by the order dated 17th March, 1992, the petitioner had filed appeal before the Additional District Judge, Shimla. The appeal was barred by limitation and application under section 5 of the Limitation Act was dismissed by the learned Additional District Judge, Shimla. The petitioner had filed CMPM(O) No. 19 of 2000 assailing the order of the learned Additional District Judge. The CMPM(O) No. 19 of 2000 was disposed of by this Court on 27/28 November, 2001. The appellate authority was directed to decide the appeal within six months. The Additional District Judge had dismissed the appeal preferred by the petitioner under section 9 of the Act on 6th September, 2002.

Mr. J.L. Kashyal, Advocate had strenuously argued that the order passed by the Estate Officer dated 17th March, 1992 and the judgment dated 6th September, 2002 are not sustainable in the eyes of law. He had further argued that the present case is squarely covered by the observations made by this Court in judgment ***Union of India v. Lachhman Dass Sain Ditta Mall*** reported in AIR 2002 HP 50 and judgment rendered by a Division Bench of this Court in CWP No.310 of 2003 decided on 26th December, 2005.

Mr. K.D. Sood, Advocate had supported the order passed by the Estate Officer dated 17th March, 1992 and the judgment dated 6th September, 2002 passed by Additional District Judge, Shimla.

I have heard the learned counsel for the parties and perused the record.

The facts which can be culled out from the pleading of the parties are that the licence was issued in favour of the respondent for stacking coal etc. The licence was revoked vide letter dated February, 1986. The Estate Officer merely on the basis of the statement made by Sh. Pramod Sood had closed the proceedings under section 4 of the Act. The Estate Officer had consequently directed the respondent to pay a sum of Rs. 32,432.27 paisa-. The Estate Officer had directed the petitioner to execute a fresh agreement with the respondent and renew it after every three years. The order passed by the Estate Officer dated 17th March, 1992 was without jurisdiction. The Estate Officer had assumed the role of owner/licencor while passing order dated 17th March, 1992. He was simply required to adjudicate upon the lis between the parties instead of embarking in the area which was prohibited under the law. The Estate Officer was required to hold whether the respondent was in unauthorized occupation and was liable to pay damages as well or not. This Court while allowing the CMPM(O) No. 19/2000 had made the following observations against the manner in which the Estate Officer had exercised his jurisdiction (*Union of India v. Best Coal Company* AIR 2002 HP 50):

“In the case on hand, the allegation of the Railway Administration was that the respondents were lincesees, the period for which the licences were granted in their favour, was over. The licences were not continued thereafter but the licensees continued to remain in possession unauthorized. Thus, they were unauthorized occupants and were liable to be evicted in accordance with law. One can understand that on the basis of allegations and counter-allegations and appreciating the evidence led by the parties, a decision can be arrived at by the Estate Officer one way or the other. In the instant cases, however, a curious approach had been adopted by the Estate Officer. In paragraph 4 of the order, the Estate Officer observed that the respondent on S.A. stated:

“He was willing to pay the licence fee to the applicant (Railway) according to the assessment of the value of land at site determined by the revenue authorities, Shimla, on the basis of revenue record and as per the relevant railway rules at the time of alleged termination of the license of plot and revision thereafter as in force from time to time.”

He then proceeded to observe that the applicant (Railway Administration) was directed to determine the value of the land and to work out the licence fee as per the instant rules and the Railway Administration was asked to submit the same before him, i.e. before the Estate Officer. The hearing was thereafter completed. The respondents-unauthorized occupants accepted the details of assessment of land and consented to execute fresh agreement on commercial plot basis.

In paragraphs 5, 6, 7 and 8, the Estate Officer observed:

“In view of the statement of the respondent as above and record available before me the case u/S. 4 for eviction is hereby closed.

As regards damages the same have been claimed by the applicant amounting to Rs. 13440/- for the period from 1.3.1986 to 28.2.89 which are inconsistent with the extant (sic) rules and as per the rationalized guidelines issued by the Rly. Board in regard to the licensing of Rly. Land of common purposes. The arrears of license fee workout for the period from 1.3.86 to 31.12.91 comes to Rs. 29483.88 upon which I (sic) purpose 10% as token damages which thus comes to Rs. 32432/27 which the respondent is liable to pay and I hold accordingly.

Further in exercise of powers conferred upon me u/S. 7/2 of the Act I do hereby order that the respondent shall pay Rs. 32432/27 as arrears of license fee including 10% as token damages for the period from 1.3.86 to 31.12.91 within two months from the receipt or publication of this order and thereafter @ Rs. 5037.27 per annum as license fee. Amount already paid, if any, by the respondent as license fee shall be deducted while effecting recovery. The respondent is also

hereby directed to execute a fresh agreement to this effect which is to be renewed after every three years.

Failing above, action as provided in the Act shall be taken.”

Reading the above order, there is no doubt that the said Officer did not decide the matter like a Tribunal or an Authority constituted under S. 3 of the Act. He virtually acted as the owner or licensor of the plots and ordered renewal of licences. It is also clear that particularly lifetime licences were created/renewed by the Estate Officer in the sense that such renewal was to be made “after every three years”.

In my opinion, the grievance voiced by the Railway Administration is fully justified that above action on the part of the Estate Officer was not only dehors the Act but without power, authority or jurisdiction. One could have understood had he dismissed the cases holding that the averments made and allegations levelled against the licensors by the Railway Administration were not well founded and, hence, they were liable to be dismissed. He had, however, no power either to direct the Railway Administrator to determine the value of the land and work out the licence fee as per instant rules nor he could issue directions to the occupants, who according to the Railway Administration, were unauthorized occupants to pay the amount and to get the licences renewed. In any case, a direction that such licences would be renewed after every three years would be wholly uncalled for. Grant of such right, if it is called right, for all time to come would be wholly without jurisdiction of the Estate Officer, who was required to decide lis between the parties, i.e. Railway Administration on the one hand and so called unauthorized occupants on the other hand. That fact, therefore, ought to have been taken into account by the learned Additional District Judge even while dealing with applications for condonation of delay.

The judgment of the appellate authority is not sustainable. The appellate authority had drawn absolutely wrong conclusions without taking into consideration the bare provisions of the Act. The findings recorded by the appellate authority are not supported by oral as well as by

documentary evidence. The Estate Officer had no jurisdiction under law to direct the petitioner to get the property evaluated from the revenue agency. There was no agreement between the parties in regard to the renewal of licence and the same has been done by the Estate Officer merely on the basis of the statement of Sh. Pramod Sood. It is evident from the record that the petitioner had never acquiesced for renewing the licence of the premises in question. The petitioner had neither agreed nor given any undertaking as reflected in the judgment of the appellate authority. The appellate Court had also wrongly invoked the principle of estoppel while upholding the order of the Estate Officer. Once the licence has been determined, the position of the respondent was of an unauthorized occupant. There was no amicable settlement arrived at between the parties as noted by the appellate authority.

A Division Bench of this Court had occasion to go into the entire gamut while deciding the CWP No. 310 of 2003, ***Union of India Versus M/s Simla Coal Company*** on 26.12.2005 based on same and similar facts. A Division Bench has held as under:

“On perusal of the record, we find that while the proceedings were pending before the Estate Officer, the Estate Officer on its own directed the petitioner to determine the value of the land and to work out licence fee and submit the same to the court. It was on the said direction that the licence fee was determined and assessment in this regard was submitted before the Estate Officer, who on the basis of assessment determined the damages and accepting the statement of the respondent which was given unilaterally, directed the petitioner to execute a fresh licence deed for a period of three years and to renew it after every three years. The record does not show that the statement given by the respondent was ever accepted by the petitioner. The Estate Officer without going into the effect of absence of any agreement between the parties in regard to the renewal of licence directed the closing

of the case and further directed the petitioner to execute a fresh licence deed to be renewed after three years. In our considered view, the order of the Estate Officer in this regard is totally without jurisdiction. The jurisdiction of the Estate Officer was only to determine whether the possession of the respondent was unauthorized or legal and on recording such finding, an order was to be passed. He had no jurisdiction to direct the petitioner to execute a fresh licence deed, especially when it was not agreed upon by the petitioner. The appellate authority also committed an error by upholding the order of the Estate Officer under the misconception that there was an agreement between the parties to renew the licence. The appellate authority failed to take notice of the fact that the licence fee accepted by the petitioner was only on the directions of the Estate Officer. Otherwise too, merely by accepting licence fee there cannot be any acquiescence on the part of the petitioner. The petitioner in law was entitled to receive compensation for the use and occupation of the premises. In fact, at no stage the petitioner acquiesced in renewing the licence of the premises in occupation of the respondent. The occupation of the respondent became unauthorized on the determination of the licence and therefore, only course available to the Estate Officer was to pass an order of eviction against the respondent. Accordingly, the order of the Estate Officer and also the Appellate Authority being not in accordance with law are liable to be set aside.

Resultantly, both the orders are set aside. In consequence thereof, the application filed by the petitioner for eviction of the respondent is allowed and order of eviction is passed against the respondent. However, considering that the respondent is in occupation of the premises since long, we allow him six months to hand over the vacant possession of the premises to the petitioner provided the respondent files an undertaking in writing within two months directly with the Registrar General of this Court that on expiry of six months, he shall hand over the vacant possession of the premises to the petitioner. The licence fee already paid shall be treated as to

be the damages for the use and occupation of the premises. In case there are any arrears, the same shall be deposited within two months including for the period of six months, which has been allowed to the respondent to vacate the premises. In case respondent fails to file an undertaking or deposit the arrears, as aforesaid, the petitioner shall be at liberty to execute the order of eviction forthwith.”

Mr. J.L. Kashyap, Advocate had submitted that the judgment of this Court dated 26.12.2005 of the Division Bench in CWP No. 310 of 2003 was assailed by way of Special Leave Petition before the Hon’ble Supreme Court. The Hon’ble Supreme Court had dismissed the Special Leave Petition meaning thereby that the judgment of this Court was affirmed. I am bound by the judgment rendered by the Division Bench in CWP No. 310/2003 dated 26.12.2005. The present controversy is squarely covered by the judgment rendered in CWP No. 310/2003.

Accordingly the writ petition is allowed. The order dated 17th March, 1992 passed by the Estate Officer and judgment dated 6.9.2002 passed by Additional District Judge, Shimla are quashed and set aside and in consequences thereof the application filed by the petitioner for eviction of the respondent is allowed and order of eviction is passed against the respondent.

There shall be no order as to costs.

(Rajiv Sharma), Judge

July 23, 2007

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